

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER COOPERATIVE, INC.;)	
DONALD R. NORRIS, PRESIDENT AND GENERAL)	
MANAGER; AND JIM FILLERS, E. A. GILBERT,)	
VIRGIL O. GINTER, DELNO TOLLIVER, BUFORD)	
GOODMAN, JAMES W. WELLS, RICHARD)	CASE NO.
CRUTCHER, JOHN L. BURTON, JAMES S.)	93-078
PATTERSON, H. E. O'DANIEL, FRED M. BROWN,)	
JAMES BARFIELD, A. L. ROSENBERGER, SAM)	
PENN, JOE TICHENOR, R. WAYNE STRATTON,)	
RICK STEPHENS, AND WILLIAM HARRIS,)	
MEMBERS OF THE BOARD OF DIRECTORS)	
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ALLEGED FAILURE TO COMPLY WITH)	
COMMISSION STATUTES)	

O R D E R

On March 11, 1993, the Commission initiated this show cause proceeding based on the finding that a probable violation of KRS 278.020(1) had occurred when East Kentucky Power Cooperative, Inc. ("East Kentucky"), with the authorization of its president and general manager and board of directors (collectively referred to as "Respondents"), entered into a contract with Asea Brown Boveri ("ABB") authorizing ABB to begin manufacturing combustion turbines ("CTs") prior to the issuance of a Certificate of Public Convenience and Necessity. The Respondents were directed to show cause, if any they could, why penalties pursuant to KRS 278.990 should not be imposed for the probable violation cited.

The Respondents filed a response to the Show Cause Order and filed additional information relating to the contract with ABB.

Informal conferences were held with the Commission Staff ("Staff") at the Commission's offices on April 2, 1993 and April 21, 1993. As a result of discussions held during the conferences, Respondents and the Staff entered into a Stipulation And Agreement which was filed on May 4, 1993. As set forth in the Stipulation And Agreement, the Respondents acknowledge that a reasonable basis existed for the Commission to initiate this show cause proceeding on March 11, 1993, and that in an effort to resolve this case in an expeditious and cost saving manner, East Kentucky will pay a civil penalty of \$2,500.

In determining whether the results of the Stipulation And Agreement are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation And Agreement and the amount of the penalty to be paid. Based on the evidence of record and being advised, the Commission hereby finds that the Stipulation And Agreement is in accordance with the law and does not violate any regulatory principal. The Stipulation And Agreement is the product of serious arms-length negotiations among capable, knowledgeable participants, is in the public interest and results in a reasonable resolution of all issues and charges pending in this case.

IT IS THEREFORE ORDERED that:

1. The Stipulation And Agreement, attached hereto and incorporated herein as Appendix A, be and it hereby is adopted and approved in its entirety as a complete resolution of all issues and charges in this case.

2. East Kentucky shall pay \$2,500 as a civil penalty within 30 days of the date of this Order by certified check or money order made payable to the Kentucky State Treasurer and mailed to the Office of General Counsel, Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 18th day of May, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
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STIPULATION AND AGREEMENT

Comes now East Kentucky Power Cooperative, Inc. ("East Kentucky"), its president and general manager, and named members of its Board of Directors (hereinafter collectively referred to as "Respondents"), and the Staff of the Public Service Commission ("Staff"), and do hereby stipulate and agree as follows:

WHEREAS, East Kentucky's Board of Directors, upon management's recommendation, voted on February 4, 1992, to authorize East Kentucky to contract with Asea Brown Boveri ("ABB") for the construction of three combustion turbine generators ("CTs") at a contract price of \$61,628,843;

WHEREAS, East Kentucky on February 26, 1992 entered a contract with ABB: 1) authorizing ABB to immediately begin engineering and design work on the CT's; 2) authorizing ABB to begin on July 15,

1992 the manufacture of the CT's; and 3) obligating East Kentucky, in the event of cancellation, to pay cancellation costs limited to maximum amounts specified in agreed upon schedules;

WHEREAS, East Kentucky filed an application with the Public Service Commission ("Commission") on March 20, 1992, designated Case No. 92-112¹, requesting a Certificate of Public Convenience and Necessity pursuant to KRS 278.020(1) and a Certificate of Environmental Compatibility pursuant to KRS 278.025(1);

WHEREAS, the Commission held a hearing in Case No. 92-112 on August 25, 1992 and subsequently ordered East Kentucky to solicit new bids for short-term peaking power;

WHEREAS, East Kentucky filed on February 3, 1993 a motion in Case No. 92-112 requesting the issuance of the aforementioned certificates necessary to commence construction of the CTs on the grounds that a sufficient evidentiary record existed to support their issuance and that project commitments, estimated by East Kentucky to be \$14.2 million as of February 1, 1993, would begin to mount at an increasing rate over the next two months;

WHEREAS, on March 11, 1993 the Commission in Case No. 92-112 issued to East Kentucky the requested construction certificates and on its own motion initiated Case No. 93-078 requiring the Respondents to show cause, if any they could, why they should not

¹ Case No. 92-112, The Application of East Kentucky Power Cooperative, Inc. For a Certificate of Public Convenience and Necessity, and a Certificate of Environmental Compatibility for the Construction of 300 MW (nominal) of Combustion Turbine Peaking Capacity and Related Transmission Facilities in Clark and Madison Counties in Kentucky.

be subject to the penalties prescribed in KRS 278.990 for the probable violation of KRS 278.020(1) by beginning to construct CTs before the Commission issued the requisite certificates;

WHEREAS, East Kentucky filed a response to the Show Cause Order and provided additional information and documentation not previously available to the Commission;

WHEREAS, at East Kentucky's request, informal conferences with Staff in Case No. 93-078 were held on April 2, 1993 and April 21, 1993, and East Kentucky filed the contract and selected correspondences with ABB.

NOW, THEREFORE, be it resolved that:

1. Respondents acknowledge that there existed on March 11, 1993 a reasonable basis for the Commission to enter a finding that a probable violation of KRS 278.020(1) existed and to initiate Case No. 93-078.

2. East Kentucky agrees that it shall pay a civil penalty in the amount of \$2,500 as a full and complete resolution of all charges pending against the Respondents in this case.

3. Respondents have denied, and continue to deny, that they committed any willful violation of KRS 278.020(1) within the scope of KRS 278.990(1), and East Kentucky's agreement to pay the civil penalty herein provided shall not constitute an admission of liability by East Kentucky or any officer or director. East Kentucky agrees to the payment of the civil penalty herein provided simply as a means of resolving this case in an amicable, expeditious, and cost-saving manner.

4. In the event that the Commission does not accept this Stipulation and Agreement in its entirety as a final resolution of this proceeding, it shall be null and void.

East Kentucky Power Cooperative, Inc.

By Donald R. Morris
PRESIDENT & GENERAL MANAGER

April 30, 1993
Date

President and General Manager

By Donald R. Morris
PRESIDENT & GENERAL MANAGER

April 30, 1993
Date

Board of Directors

By John D. Clark
LEGAL COUNSEL TO THE BOARD

April 30, 1993
Date

Public Service Commission Staff

By Richard G. Ruff

May 4, 1993
Date